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No. 02-1019

In the Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* FOR THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS IN SUPPORT OF PETITIONER

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33 pp

QUESTIONS PRESENTED

The petition for *certiorari* presented the following question:

1. When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York* v. *Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

Amicus also will address the following question, which may be of assistance to the Court in resolving the question presented by petitioner:

2. May police search the passenger compartment of a vehicle incident to the arrest of a recent occupant of that vehicle when the arrestee has been handcuffed and placed in the back seat of a nearby police car at the time the search is conducted?

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The National Association of Police Organizations ("NAPO") respectfully moves, pursuant to Supreme Court Rule 37.3(b), for leave to file the attached brief *amicus curiae*. Counsel for petitioner has consented to the filing of this brief, and his original signed consent has been filed concurrently with the filing of this motion. Counsel for respondent has declined to consent.

This case concerns the application of the Fourth Amendment, U.S. Const. amend. IV, and specifically the Court's decision in *New York* v. *Belton*, 453 U.S. 454 (1981), to the search of respondent's car incident to his arrest. This case thus presents a factual scenario that occurs hundreds, and even thousands of times a day in this country: the arrest of a vehicle's recent occupant. As the Court has recognized in *Belton* and in other cases, this scenario presents significant challenges to police officers as they attempt to maintain their own safety and preserve evidence while respecting the dictates of the Fourth Amendment.

NAPO is an umbrella organization representing police associations and unions nationwide. Through its member groups it represents more than 230,000 active sworn law enforcement officers at the state, county, and local levels, as well as retired officers and concerned citizens. Police officers such as those who are members of NAPO groups have a strong and genuine interest in the development of "workable rule[s]," *Belton*, 453 U.S. at 460, under which they can conduct themselves within the Fourth Amendment's strictures, including rules that govern the search of a vehicle incident to arrest.

NAPO hopes to offer the Court the perspective of the working police officer on the lower court's ruling, its potential impact on officer safety and preservation of

evidence, and the necessity of crafting sensible and easily applied Fourth Amendment rules that officers can follow in the field. NAPO respectfully believes that an opportunity to consider its views on the issues raised herein would be of help to the Court in resolving this case.

Accordingly, NAPO requests that the Court grant its motion for leave to file the attached brief *amicus curiae* in support of petitioner.

Respectfully submitted,

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INTEREST OF THE *AMICUS CURIAE* [1]

The National Association of Police Organizations, Inc. ("NAPO") is a coalition of police associations and unions from across the United States. NAPO represents some 1,000 organizations, with over 230,000 sworn law enforcement officers (including police officers, deputy sheriffs, state troopers, highway patrol officers, and traffic enforcement personnel), 11,000 retired officers, and more than 100,000 interested citizens. NAPO seeks, in part, to advance the interests of law enforcement officers through legal advocacy. To that end, NAPO has filed *amicus* briefs in cases in this Court that have raised issues of concern to law enforcement officers.

This case presents an issue of considerable importance to NAPO. Upon arresting the occupant of a vehicle, law enforcement officers, acting under the authority of *New York* v. *Belton*, 453 U.S. 454 (1981), regularly search the vehicle in order to ensure their safety and prevent the destruction of evidence. These interests would be compromised if, as the court below held, officers were barred from conducting such searches incident to arrest in situations where they were not sure whether the suspect was aware of their presence before getting out of his vehicle. NAPO therefore has a strong interest in urging this Court to reverse the decision of the Arizona Court of Appeals.

STATEMENT OF THE CASE

Police went to the home of respondent Rodney Gant to investigate a report of narcotics activity. Respondent answered the door, but falsely told the officers that he was not Rodney Gant and that Gant was not at home. Pet. App. A-2; Jt. App. 5, 10, 19, 31. After leaving respondent's home, police learned that respondent was

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[1] This brief was not authored, in whole or in part, by counsel for any party, and no person or entity other than *amicus curiae* and its counsel made any monetary contribution to its preparation.

wanted for driving on a suspended license and that there was an outstanding warrant for his arrest for failure to appear. Pet. App. A-2

Officers then returned to respondent's home, where they found two people, one of whom possessed a crack pipe, on the premises. Pet. App. A-2. While the officers were still present, respondent drove his car into the driveway. Respondent's car passed one of the officers, who shined his flashlight into the driver's window and recognized respondent. *Ibid.* As the officer walked toward respondent's car, respondent got out of the car and walked toward the officer. *Id.* at A-3. The officer called respondent by name, and respondent admitted that he was Rodney Gant. The officer then arrested respondent for driving with a suspended license and on the outstanding warrant. *Ibid.* After placing respondent in the back seat of a patrol car in handcuffs, the officers searched respondent's vehicle and found a handgun and a jacket that contained cocaine and drug paraphernalia. Pet. App. A-3; Jt. App. 5-7.[2]

Respondent filed a motion to suppress the evidence found in his car, claiming that the warrantless search of his car violated the Fourth Amendment. Pet. App. A-3. The trial court denied respondent's motion, ruling that the car search was lawful as a search incident to respondent's arrest. *Ibid.*

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[2] NAPO acknowledges that the manner in which the facts of this case were determined, *i.e.*, an oral stipulation recited by the trial judge and agreed to by the parties, was less than ideal. Nevertheless, NAPO agrees with petitioner that the stipulated record contains all the facts necessary to decide the question presented by this case. No additional facts that might bear on whether the arresting officer actually knew whether respondent was aware of the police before he got out of his car are necessary to the resolution of this case because, as NAPO argues herein, such a determination by the officer is both impractical to require and irrelevant to the validity of the search of the car after respondent's arrest.

The Arizona Court of Appeals reversed, holding that the search of respondent's car violated the Fourth Amendment. *State* v. *Gant*, 43 P.3d 188 (Ariz. App. 2002), reprinted at Pet. App. A. The court of appeals rejected petitioner's argument that the search of respondent's car was authorized under *New York* v. *Belton*, 453 U.S. 454 (1981), ruling that "*Belton* is limited to the particular factual situation in which it arose," and "applies only when 'the officer initiates contact with the defendant * * * while the defendant is still in the automobile.'" Pet. App. A-6 (quoting *United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). The court distinguished *Belton* on the ground that the record in this case does not establish that respondent "was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle." Pet. App. A-5. The court found it "significant" that "[respondent] voluntarily—that is, not in response to police direction—stopped his vehicle, exited it, and began to walk away from it." *Ibid.*

In deciding that the record does not sufficiently establish that the officer initiated contact with respondent by shining the flashlight into his car, the lower court conducted a lengthy analysis of the circumstances leading up to the arrest. The court found that the record failed to establish a number of facts it regarded as critical, including how far the officer was from the car when he shined his flashlight at it, whether respondent looked in the direction of the light, to what extent obvious signs of police activity were visible outside the home (such as flashing lights or uniformed officers), and what the lighting conditions were like. In addition, the court found nothing in the record to indicate that the officer had intended to signal his presence and desire to speak with respondent by shining the light into

respondent's car (as opposed merely to trying to see who was inside). Pet. App. A-7, A-8.

In a concurring opinion, one member of the three-judge panel expressed "concerns that our ruling * * * may frustrate [the] purposes [behind *Belton*] and incorporate unintended nuances into this already complicated Fourth Amendment arena." Pet. App. A-10 to A-11.

SUMMARY OF ARGUMENT

In *New York* v. *Belton*, 453 U.S. 454 (1981), the Court adopted a bright-line rule that, when a police officer makes a lawful arrest of the occupant of a vehicle, the officer may search the passenger compartment of that vehicle incident to the arrest in order to protect himself and prevent the destruction of evidence. The *Belton* Court acknowledged the need to craft "workable rule[s]," 453 U.S. at 460, and recognized that "'a single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect'" on the balance of interests implicated by the Fourth Amendment, 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979)). As a consequence of these concerns, the *Belton* Court held that the passenger compartment of a vehicle, including containers within it, categorically represented an area within the reach of an arrestee, and therefore could be searched incident to the arrest of the vehicle's occupant. 453 U.S. at 460.

The Arizona Court of Appeals based its decision on a peculiar misunderstanding of *Belton*. The court of appeals held that an arresting officer's right to conduct a *Belton* search depends in part on whether the arrestee was somehow aware of the presence of police officers before he got out of his car and was arrested by them, or, as the court put it, whether he "voluntarily" got out of the car or got out because he knew the police were

outside and wanted him out. The court of appeals concluded that *Belton* does not authorize a search of the passenger compartment incident to arrest where the arrestee gets out of his car before he learns the police are present. The lower court's holding should be reversed because it interprets *Belton* in a way that both undermines its bright-line rule and is irrelevant to its underlying reasoning.

The lower court's holding undermines *Belton*'s bright-line rule by requiring police officers who did not cause an arrestee to leave his vehicle to conduct a difficult and individualized assessment of the events leading up to the arrest to determine whether the arrestee knew of their presence before he got out of the vehicle. Because the typical arrest scenario provides police with little time to make such a complex assessment, and because an officer who has not himself stopped the arrestee's car would usually have no way of quickly judging, with any degree of certainty, whether the arrestee had known of his presence before his arrest, the lower court's rule undermines the need to provide officers in the field with a rule that is simple and easy to apply.

Moreover, the fact that an arrestee exits his vehicle before becoming aware of a police presence is irrelevant to the rationale underlying the *Belton* rule—protection of officers and evidence from the dangers that arise when a person is arrested. Initially, the concerns for officer safety and evidence preservation that underlie the rule, and the resulting need to be able to neutralize those dangers in the vehicle, come from the fact of the arrest itself, regardless of what the arrestee knew. Whether the arrested person knew before he was arrested that the police were present is a fact that precedes, and is therefore irrelevant to, that risk; consequently, what officers might be able to discern about his knowledge

before they arrested him is similarly immaterial to their need to search.

A person who, like respondent, is arrested after exiting his vehicle is unlikely to be significantly less angry or less motivated to reach for a weapon or destroy evidence because he only learned the police were there when they arrested him, as opposed to having seen them through his window before getting out. In fact, the lower court's rule in this case increases the risk of harm to officers and evidence by providing officers with an incentive to confront suspects while still in their cars, and thus closer to any weapons or evidence contained therein, rather than (as might be wiser in some situations) waiting for the suspect to move at least some distance from his car. It could also provide suspects with a similar incentive to leave their vehicles quickly in order to keep them from being searched. Both incentives pose risks to officers' ability to control the scene of the arrest.

Nor should the fact that the arrestee is handcuffed and placed in the back seat of a nearby police car, as was the case here, negate the authority to conduct a *Belton* search. In *Belton*, the Court made clear that its bright-line rule applies to cases where no real threat to officer safety or evidence exists. Furthermore, concern for officer safety and evidence preservation does, in fact, continue to exist even when an arrestee is handcuffed in the backseat of a police car at the time of the search; the use of handcuffs and placement in a nearby vehicle may reduce, but do not eliminate, the danger to the arresting officer.

ARGUMENT

I. Whether Police Officers Can Tell If The Recent Occupant Of A Vehicle Knew Of Their Presence Before His Arrest Should Not Control Whether Officers May Conduct A *Belton* Search After They Have Arrested Him.

The ability of an officer to search a car incident to an arrest under *Belton* is premised on risks that arise from arrests generally. The lower court's ruling that police officers need to determine whether a suspect was aware of their presence before that arrest took place assigns controlling weight to an irrelevant factor and requires officers in the field to perform a difficult and nuanced evaluation of that irrelevant factor before deciding whether they may act to protect themselves and any evidence in the car. The Court should reject the lower court's rule as contrary to the concerns underlying *Belton*, as well as to common sense.

A. *Belton* Categorically Permits Police To Search The Passenger Compartment Of A Vehicle Incident To The Lawful Arrest Of A Recent Occupant.

The Fourth Amendment generally prohibits police from conducting a search without first obtaining a warrant. See *Belton*, 453 U.S. at 457. However, recognizing that "'the exigencies of the situation' may sometimes make exemption from the warrant requirement 'imperative,'" this Court has identified several exceptions to the warrant requirement. *Id.* (quoting *McDonald* v. *United States*, 335 U.S. 451, 456 (1948)). One such exception is a search incident to arrest. See *Chimel* v. *California*, 395 U.S. 752, 763 (1969).

In *Chimel*, the Court held that, after arresting a suspect, police may search "the arrestee's person and

the area 'within his immediate control.'" *Ibid.* The Court provided two reasons for its holding. First, a search incident to arrest permits the officer "to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape." *Ibid.* Second, a search incident to arrest helps to prevent the arrestee from destroying evidence. *Ibid.*

In *United States* v. *Robinson*, 414 U.S. 218 (1973), the Court applied *Chimel* to the search of a defendant's person after he had been ordered out of his car and arrested. When the arresting officer felt an object in Robinson's coat pocket, he pulled the object from the pocket, revealing it to be a "'crumpled up cigarette package.'" *Id.* at 222-223. Still unsure what the cigarette pack contained, the officer opened the pack and found heroin. *Ibid.*

The *Robinson* Court upheld the search as incident to a valid arrest. 414 U.S. at 236. In doing so, the Court rejected a case-by-case analysis of "whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest." *Id.* at 235. Rather, the Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; *that intrusion being lawful, a search incident to the arrest requires no additional justification.*

Id. at 235 (emphasis added). Accordingly, in upholding the search of the defendant's person, the Court found it

irrelevant that the officer "did not indicate any subjective fear" of the defendant, or that the officer "did not himself suspect that [the defendant] was armed." *Id.* at 236.

In *Belton*, the Court considered whether the passenger compartment of a car fell "within [the] immediate control" of an arrestee who had been the recent occupant of the car. *Belton*, 453 U.S. 454. In *Belton*, a police officer pulled over a speeding car. *Id.* at 455. While speaking with the occupants, the officer smelled marijuana and saw an envelope on the floor of the car with markings suggesting that it contained marijuana. See *id.* at 455-456. The officer ordered the men out of the car, arrested them for possession of marijuana, and split them up into four separate areas of the road. See *id.* at 456. The officer then searched the car and discovered cocaine in the pocket of the defendant's jacket in the back seat. *Ibid.*

In approving the search, the *Belton* Court blended the concerns for officer safety and the preservation of evidence expressed in *Chimel* with *Robinson's* preference for a rule that was easy for officers to apply and did not depend on the subtler facts of a given situation. The Court observed that "'a single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979)). "'A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.'" *Belton*, 453 U.S. at 458 (quoting Wayne R. LaFave, *"Case-By-Case*

Adjudication" Versus "Standardized Procedures": The Robinson Dilemma, 1974 SUP. CT. REV. 127, 141).

In addressing the proper scope of a vehicle search incident to arrest, the Court noted that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Belton*, 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763). Relying on this generalization about arrestees and their vehicles, the Court announced the following rule, meant to be of general application: "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnote omitted). Because the defendant's "jacket was located inside the passenger compartment of the car in which the [defendant] had been a passenger just before he was arrested," the Court held that the jacket was "'within the arrestee's immediate control'" and the search thus complied with the Fourth Amendment. *Id.* at 462-463.

The *Belton* rule therefore requires officers to make only a simple and limited factual determination before proceeding to search the interior of a vehicle: whether the person they had arrested was in the vehicle or had recently left it and remained nearby. The Court thus avoided the need for police officers to make difficult determinations on the fly as to whether *their particular situation* posed the dangers presented by arrests generally.

B. *Belton* Applies Regardless Of Whether The Arrestee Was Aware Of The Police Before Exiting His Vehicle.

The Arizona Court of Appeals held that *Belton* does not authorize the search of respondent's car because *Belton* "applies only when 'the officer initiates contact with the defendant * * * while the defendant is still in the automobile.'" Pet. App. A-6 (quoting *United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). The court found that, unlike *Belton*, the record here does not demonstrate that respondent "was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle." Pet. App. A-5. Instead, according to the court, respondent "voluntarily—that is, not in response to police direction—stopped his vehicle, exited it, and began to walk away from it." *Ibid.*

The knowledge requirement imposed by the court of appeals will not make much difference in cases where an officer has openly stopped the vehicle himself, such as in a traffic stop like the one in *Belton*. Nonetheless, as the facts of this case demonstrate,[3] arrests of the recent occupants of vehicles can occur in other factual contexts, such as during undercover operations or where, as here, the suspect by his own actions places himself in contact with officers before he is arrested. These situations present the same dangers to officers and evidence as do arrests made after traffic stops. Therefore, in these contexts the lower court's holding both undermines *Belton*'s bright-line rule and is irrelevant to its underlying rationale.

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[3] See also *Thomas* v. *State*, 761 So. 2d 1010 (Fla. 1999), cert. dismissed, 532 U.S. 774 (2001).

1. Requiring police to determine whether an arrestee was aware of a police presence before exiting his vehicle undermines *Belton*'s bright-line rule.

The Court has characterized law enforcement's interest in bright-line, "readily administrable rules" as "essential," recognizing their value to police officers faced with the need to make quick Fourth Amendment calls:

> [A] responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review. Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made.

Atwater v. *City of Lago Vista*, 532 U.S. 318, 347 (2001) (citations omitted). The lower court's requirement that officers try to figure out whether their arrestee knew they were there before they arrested him in order to search his car presents precisely the type of "sensitive" determination that the Court has sought to avoid requiring of officers in the field.

The lower court's opinion itself demonstrates that such an inquiry is incompatible with the notion of a clear and simple rule. In finding that the record did not establish whether the officer initiated contact with respondent by shining a flashlight into his car, the court identified a long list of circumstantial and sometimes subjective factors that could have influenced that

determination, including (a) the distance between respondent's vehicle and the officer, (b) the lighting at the scene, (c) whether respondent would have seen that a light had been shined into his vehicle, (d) whether respondent would have identified that light with the police, and (e) whether respondent had seen police officers or any other sign of police activity at the residence. Pet. App. A-7.

This kind of case-by-case analysis, difficult enough for appellate judges to make clearly and simply, would be even more so for police officers to undertake in deciding whether they may search the vehicle of a recent occupant incident to arrest. The typical arrest scenario provides the officer with little time to consider the "'social and individual interests involved.'" *Belton*, 453 U.S. at 458 (quoting *Dunaway*, 442 U.S. at 213-214). The complexity and circumstantial nature of this inquiry, like most that involve assessing knowledge, renders it out of place in these circumstances. Police officers will frequently have little way of knowing whether an arrestee "was or should have been aware" of the police when he exited his vehicle, as the lower court would require. Pet. App. A-5.

Given the difficult and circumstantial nature of the inquiry conducted by the lower court, litigation about the arrestee's awareness of a police presence is likely to lead to disparate results, and would not provide officers with "a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made." *Atwater*, 532 U.S. at 347. In sum, the lower court's requirement of a complex case-by-case inquiry into the state of mind of the arrestee does not provide officers with a "single, familiar standard [that] is essential to guide police officers," *Belton*, 453 U.S. at 458, and therefore undermines *Belton*'s rule.

2. Concerns for police safety and evidence preservation arise from the arrest, regardless of whether the arrestee was aware of the police before exiting his vehicle.

Whether an arrestee exits his vehicle before becoming aware of a police presence is irrelevant to the concerns underlying the *Belton* rule—officer safety and evidence preservation. As the Fourth Circuit recently put it, "[d]anger to an officer from an arrest and the need to discover and preserve evidence continue to be concerns regardless of whether the arrestee exits the automobile voluntarily or because of confrontation with an officer." *United States* v. *Thornton*, 325 F.3d 189, 195 (4th Cir. 2003); accord *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 142 (Va. 1999); *People* v. *Savedra*, 907 P.2d 596, 601 (Colo. 1995). The justification for the intrusion of a *Belton* search arises from the risks inherent in arrest situations. Compare *Belton* with *Knowles* v. *Iowa*, 525 U.S. 113 (1998) (*Belton* search not justified where traffic stop results in citation but no arrest made). That arrest is thus all that is necessary to justify the intrusion. *Belton*, 453 U.S. at 461. Accordingly, whether the police have a need to take measures to prevent a suspect from retrieving a weapon or destroying evidence in his car *after* he has been arrested is not dependent on what he knew *before* he was arrested.

The lower court's rule in this case provides both police officers and arrestees with perverse incentives that are antithetical to the concerns underlying *Belton*. For arrestees, the lower court's rule would provide a motive "to avoid lawful searches of their vehicles by rapidly exiting or moving away from the vehicle as officers approached," thereby increasing both the number and difficulty of situations in which officers must decide whether the arrestee was aware of their presence before

leaving the vehicle. *State* v. *Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999); accord *Pettigrew* v. *State*, 908 S.W.2d 563, 570 (Tex. App. 1995); *People* v. *Bosnak*, 633 N.E.2d 1322, 1326 (Ill. App. 1994); *State* v. *Gonzalez*, 487 N.W.2d 567, 572 (Neb. App. 1992). In addition, encouraging subjects to exit their cars as police approach would diminish officers' abilities to control the movements of individuals at police encounters, thus heightening concerns for officer safety. See *Maryland* v. *Wilson*, 519 U.S. 408, 413 (1997); *Michigan* v. *Summers*, 452 U.S. 692, 702-703 (1981); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977).

For police officers, by contrast, the lower court's rule provides an incentive to approach all suspects in cars overtly, so as to be sure (in the only way they could be sure) that, if an arrest were made, they would be able to protect themselves and any evidence present by conducting a *Belton* search. The lower court's rule thus does not account for the fact that"when encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight." *Thornton*, 325 F.3d at 195.[4] Whether or not that tactic is the safer one under a particular set of circumstances will be a hard enough decision for officers to make in the fleeting moments of a field encounter without requiring their ability to protect themselves under *Belton* to hang in the balance as well.

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[4] See also *People* v. *Fernengel*, 549 N.W.2d 361, 364 (Mich. App. 1996) (O'Connell, J., dissenting) (police acted prudently by waiting for the defendant to get out of his vehicle before making an arrest because this procedure "negated any possibility that defendant would use [the] weapon" in his car).

In addition to decreasing the risk of harm to police and evidence, waiting until the suspect exits his car to confront him could, in some circumstances, serve other goals. For example, tinted windows or difficult weather or lighting conditions could make it difficult for a police officer to determine whether a vehicle's occupant is the suspect he is looking for. But the lower court's rule encourages the officer to confront the vehicle rather than waiting until the suspect gets out of the car in order to confirm the suspect's identity. The lower court's rule thus would lead to additional unnecessary vehicle stops, actually increasing the number of intrusions onto citizens' liberties. In short, police officers should be provided with the discretion to decide whether the circumstances justify waiting for the suspect to exit his car before alerting the suspect to a police presence, without forfeiting the ability to search the suspect's car incident to the arrest by doing so.

There will, of course, be cases where a *Belton* search is impermissible because the arrest does not take place until the defendant is far removed from his vehicle. See, *e.g.*, *State* v. *Tompkins*, 423 N.W.2d 823, 826 (Wis. 1988) (arrest made fifteen minutes after arrestee exited his car and entered nearby tavern). But in this case, where respondent had taken only a few steps from his car before being confronted by the police, it is clear that he was sufficiently close to his vehicle at the time of his arrest to satisfy the *Belton* rule. See *Thornton*, 325 F.3d at 196 (police officer confronted the arrestee "*within moments*" of exiting his vehicle) (emphasis in original); *United States* v. *Snook*, 88 F.3d 605, 608 (8th Cir. 1996) (arrestee "had just stepped out of his vehicle as the officer arrived"); *People* v. *Bosnak*, 633 N.E.2d 1322, 1327 (Ill. App. 1994) (arrestee had walked ten yards from his car before being confronted by police). Therefore, this case does not require the Court to determine the precise distance between the arrestee and

his car at which point a *Belton* search becomes impermissible.

II. *Belton* Allows A Vehicle Search Incident To Arrest Even If The Arrestee Is Handcuffed In The Back Seat Of A Nearby Police Car When The Search Is Conducted.

Although *amicus* believes that the question upon which the Court granted certiorari in this case is limited to the issues discussed above, some members of the Court have recently expressed interest--in an almost identical case--in an additional issue regarding the execution of vehicle searches under *Belton*. In the event that the Court might find that consideration of this additional issue will aid it in resolving the question presented, *amicus* will address it.

Two years ago, the Court granted certiorari to review a decision of the Florida Supreme Court holding that "'*Belton*'s bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant' while the defendant remains in the car." *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001) (quoting *Thomas* v. *State*, 761 So. 2d 1010, 1014 (Fla. 1999)). Although the Court ultimately dismissed the writ of certiorari for want of jurisdiction, 532 U.S. at 781, several members of the Court inquired at oral argument in *Thomas* whether *Belton* would support the search of the defendant's vehicle in that case even though the defendant was handcuffed and had been taken into a nearby house at the time the police searched his car in the driveway. In the ensuing colloquy, that situation was compared to the one in this case, in which respondent was arrested and placed in a nearby police car. See, *e.g.*, 4/25/01 Tr. of Oral Argument, *Florida* v. *Thomas*, No. 00-391, at 12-13, 21-22.

Here, as in *Thomas*, the question presented is limited to whether a vehicle search is valid under *Belton* where the arrestee exits his car unaware of a police presence. Nevertheless, given the Court's interest expressed during the *Thomas* argument, *amicus* will also address whether *Belton* should apply where, as here, the arrestee is placed in a nearby police car in handcuffs before the vehicle search is conducted.

Amicus acknowledges that there are factual differences between this case and *Belton*. In *Belton*, a lone police officer pulled over a car with four occupants. 453 U.S. at 456. In this case, several officers were present at the arrest of respondent. Despite this factual difference, however, the *Belton* rule should still apply to this case. First, *Belton* applies even in cases where no threat to officer safety or evidence exists. Second, concerns for officer safety and evidence preservation persist where the arrestee is handcuffed in the back seat of a police car at the time of the search.

A. *Belton*'s Bright-Line Rule Applies Regardless Of Whether There Is Actual Danger To Officers Or Evidence.

In announcing its bright-line rule, the *Belton* Court recognized that the concern for officer safety and evidence preservation would not exist in every instance in which a vehicle's occupant was arrested. The Court noted that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact *generally, even if not inevitably*, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary [item].'" 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763) (emphasis added). Basing its decision specifically on that very "generalization," as well as the need for a rule of similarly general application, *Belton*, 453 U.S. at 460, the Court announced a rule that was

intended to apply to *all* vehicle searches incident to arrest, regardless of the particular circumstances surrounding the arrest. It thus would be inconsistent with *Belton*'s bright-line rule to require a showing that the arrestee presented a particularized risk of harm to the officer or to the evidence before permitting the officer to search the arrestee's vehicle.

Further indication that the existence of an actual risk of harm to a police officer or to evidence does not dictate the officer's ability to search the vehicle is found in *Belton's* holding that officers searching a vehicle incident to arrest may open containers inside the vehicle even when the containers "could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested." 453 U.S. at 461. The *Belton* Court relied on *Robinson*, which had explained that the authority to search incident to an arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect," but instead was a product of the arrest itself. *Robinson*, 414 U.S. at 235; *Belton*, 453 U.S. at 461. Just as a police officer may open a container in a vehicle even though the container "could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested," *Ibid.*, so too an officer may search a vehicle incident to arrest independent of his or her subjective belief that the vehicle contains weapons or evidence or that the arrestee would or could actually get to it. In other words, once the officer has conducted a lawful arrest of a vehicle's recent occupant, the officer may then search the vehicle regardless of "what a court may later decide was the probability * * * that weapons or evidence would in fact be found" in the automobile. *Ibid.*

The lower courts have recognized that *Belton* "is a bright-line rule that may be invoked regardless of whether the arresting officer has an actual concern for safety or evidence." *United States* v. *McLaughlin*, 170 F.3d 889, 891-892 (9th Cir. 1999). Indeed, "the great weight of authority" in the lower courts "holds that *Belton*'s bright-line rule applies even in cases where the arrestee is under physical restraint and at some distance from the automobile during the search." *United States* v. *Doward*, 41 F.3d 789, 791 n.1 (1st Cir. 1994); accord *United States* v. *Wesley*, 293 F.3d 541, 549 (D.C. Cir. 2002); *McLaughlin*, 170 F.3d at 891-892; *United States* v. *Franco*, 981 F.2d 470, 472 (10th Cir. 1992); *United States* v. *Karlin*, 852 F.2d 968, 970 (7th Cir. 1988); *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 140 (Va. 1999); *People* v. *Bailey*, 639 N.E.2d 1278, 1282 (Ill. 1994); *State* v. *Fry*, 388 N.W.2d 565, 574 (Wis. 1986).

In *Karlin*, for example, the defendant argued that *Belton* did not apply to permit the search of his van because, unlike the arrestees in *Belton*, he was handcuffed in the backseat of a police car when officers conducted the search. 852 F.2d at 970. The Seventh Circuit disagreed, stating that if the factual differences between the defendant's arrest and *Belton* were "to control, the [Supreme] Court's preference for a straightforward rule for guidance of police officers and avoidance of hindsight determinations in litigation would be frustrated." *Id.* at 970-971. The court noted that acceptance of the defendant's position "would require a factual determination in each instance of how thoroughly the arrestee had been secured and his distance from the vehicle." *Id.* at 971. Because such a determination would be inconsistent with *Belton*'s bright-line rule, the court upheld the search of the defendant's van without finding the need to determine "whether the officer had rendered [the defendant] incapable of reaching into the van." *Id.* at 971-972.

The Seventh Circuit was correct in pointing out the incompatibility between *Belton*'s bright-line rule and a case-by-case examination of "how thoroughly the arrestee had been secured and his distance from the vehicle." *Karlin*, 852 F.2d at 971. Individualized determinations would require police officer to balance innumerable factors, such as the number of officers at the scene, the number of arrestees in the vehicle, whether the arrestee was handcuffed at the time of the search, the distance from the arrestee to his vehicle, the arrestee's physical strength, whether the arrestee has a propensity for violence, and the proximity of any confederates of the arrestee. This type of individualized inquiry fails to provide police officers with the "single, familiar standard" that allows officers to predict when they may search a vehicle incident to arrest, and thus is incompatible with *Belton*'s bright-line rule. 453 U.S. at 456.

B. Concern For Police Safety And Evidence Preservation Continues To Exist When The Arrestee Is Handcuffed In The Back Seat Of A Police Car.

The risks to officers and evidence generated by an arrest situation that the *Belton* Court relied on in announcing its general rule are still sufficiently present to justify a search of an arrestee's vehicle even where, as here, the arrestee has been handcuffed and placed in the backseat of a police car at the scene. Experience has taught NAPO's members that, while such confinement may reduce the risk of aggressive action by the arrestee, it does not by any means eliminate it, nor does it reduce the danger posed by nearby confederates of the arrestee. The purposes behind the *Belton* rule, namely simplicity and safety, would thus be well served by retaining the ability to conduct a search under that rule while the arrestee remains at the scene, even if confined.

Every arrest "present[s] a risk of danger to the arresting officer. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger." *Washington* v. *Chrisman*, 455 U.S. 1, 7 (1982) (citation omitted). All too often the risk of danger to an arresting officer turns to reality: about one-third of the 644 law enforcement officers feloniously killed in the line of duty between 1991 and 2000 were killed during arrest situations. FBI, *Uniform Crime Reports: Law Enforcement Officers Feloniously Killed and Assaulted 2000*, Figure 3, Circumstances at Scene of Incident, 1991-2000. Indeed, this Court has recognized that the risk of harm to an arresting officer increases when the circumstances of the arrest involve a vehicle. See, *e.g.*, *Wilson*, 519 U.S. at 413; *Michigan* v. *Long*, 463 U.S. 1032, 1048 n.13, 1049 (1983); *Robinson*, 414 U.S. at 234 n.5.

Handcuffing an arrestee and placing him in a nearby police car, while a common practice, does not eliminate the danger to the arresting officer. Regrettably, "[t]he limitations of handcuffs' effectiveness are widely known to law enforcement personnel." *United States* v. *Sanders*, 994 F.2d 200, 209 (5th Cir. 1993) (describing cases where handcuffed arrestees injure police officers). "[L]ike any mechanical device, handcuffs can and do fail on occasion." Moreover, handcuffs "do not impair a person's ability to use his legs and feet, whether to walk, run, or kick." *Ibid.* And although handcuffs *limit* a person's ability to use his hands and arms, "the degree of the effectiveness of handcuffs in this role depends on a variety of factors, including the handcuffed person's size, strength, bone and joint structure, flexibility, and tolerance of pain." *Ibid.*

Thus, although difficult, "it is by no means impossible for a handcuffed person to obtain and use a weapon concealed on his person or within lunge reach,

and in so doing to cause injury to his intended victim, to a bystander, or even to himself." *Sanders*, 994 F.2d at 209. Escape from handcuffs and a patrol car are not nearly impossible feats, and, if accomplished, present extraordinary risks to officer safety and evidence if a *Belton* search has not been conducted. In that situation the escapee would present more than the usual dangers; if weapons or evidence were in the nearby vehicle, he would have the additional advantage over the officer of knowing those facts.

Furthermore, the danger posed by the arrestee is not the only risk officers face during and after an arrest. Police also must be concerned about the possibility that the arrestee has confederates in the area. In this case, for example, respondent was arrested in the driveway of his home, with others in the area who might have known of the contents of respondent's car (and certainly knew as much or more about those contents than the police did). Thus, "[i]t was certainly reasonable for the police to have believed that [respondent] *or others* could possibly gain access to a weapon or destroy evidence in the vehicle." *United States* v. *Willis*, 37 F.3d 313, 317 (7th Cir. 1994) (*Belton* permitted search of defendant's car although he was handcuffed and in the backseat of a police car at the time of the search where "[t]here were also many individuals who were congregated in the schoolyard near the vehicle") (emphasis added); see also *United States* v. *Doward*, 41 F.3d 789, 793 n.5 (1st Cir. 1994); *United States* v. *Arango*, 879 F.2d 1501, 1505 (7th Cir. 1989) ("[T]he presence of an arrestee mandates the need to protect both persons and evidence from the often imprudent and unpredictable actions of a person just arrested, *or perhaps even a nearby confederate*") (emphasis added).

Finally, limiting *Belton* to situations where the arrestee is not handcuffed could increase the risk of

harm to police and the public. Given the "often competitive enterprise of ferreting out crime," some police officers seeking certainty might put themselves and the public at risk by not handcuffing the arrestee and keeping him near his car so that they could search it. See *Summers*, 452 U.S. at 703 n.18. There is simply no need to create a disincentive to reduce risk by creating tension between concerns for safety and criminal investigation.

In light of the risks inherent in arrest situations, police officers should be able to neutralize the scene of arrest by taking all reasonable precautions, including both the common practice of handcuffing the arrestee and placing him in the back seat of a nearby police car and searching the arrestee's vehicle. Choosing the former should not vitiate the ability to enhance safety further by doing the latter as well.

Amicus acknowledges that there will likely be cases where the arrestee is so incapacitated, or so removed, from the scene of the arrest, and the officers so otherwise in control, that the rationale for a *Belton* search would be entirely absent, although determining when that has occurred has not turned out to be an easy task, even for courts examining the situation in contemplative hindsight. Compare, *e.g.*, *United States* v. *McLaughlin*, 170 F.3d 889, 893 (9th Cir. 1999) (upholding vehicle search initiated after police drove arrestee away from the scene) with *United States* v. *Lugo*, 978 F.2d 631, 634 (10th Cir. 1992) (invalidating vehicle search under similar circumstances). Police officers might, if circumstances warrant, choose to remove an arrestee entirely from the scene before they have conducted a vehicle search, considering his mere presence to pose a greater risk than nearby confinement and a *Belton* search could dispel.

This case, though, presents a more common scenario, in which respondent remained nearby, though confined in a police car. Those measures did not eradicate the risk that he or a confederate might have grabbed the gun or the drugs that were, in fact, in his car. Therefore, concern for officer safety and evidence preservation existed in this case even though respondent was handcuffed in the back seat of a police car while the search of his car was conducted.

CONCLUSION

The decision of the Arizona Court of Appeals should be reversed.

Respectfully submitted.

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